

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

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AMENDED IN ASSEMBLY JULY 13, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 26, 2011

## **SENATE BILL**

**No. 753**

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**Introduced by Senator Padilla**  
**(Coauthors: Senators Steinberg and De León)**  
(Coauthor: Assembly Member Blumenfield)

February 18, 2011

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An act to amend Sections 313 and 60810 of the Education Code, relating to pupils.

### LEGISLATIVE COUNSEL'S DIGEST

SB 753, as amended, Padilla. Pupils: English learners: assessment.

Existing law requires each school district that has one or more pupils who are English learners to assess the English language development of each of those pupils in order to determine the level of proficiency of those pupils. The assessment primarily consists of the administration of the California English Language Development Test (CELDT) that assesses pupils in grades 2 to 12, inclusive, in English listening, speaking, reading, and writing skills, and pupils in kindergarten and grade 1 in English listening and speaking. Existing law requires that the assessment be conducted upon initial enrollment, and annually thereafter during a period of time determined by the Superintendent of

Public Instruction and the State Board of Education, until the pupil is redesignated as English proficient.

This bill, ~~commencing with the 2013–14 school year~~, would require a school district to annually conduct the assessment during a period that commences on the day upon which 55% of the instructional year is completed through July 1 of that calendar year and would require the assessment to be conducted upon the initial enrollment of a pupil in order to provide information to be used to determine if the pupil is an English learner. *These changes would not be implemented unless and until the State Department of Education receives written documentation from the United States Department of Education that implementation is permitted by federal law or until the 2013–14 school year, whichever occurs later.* The bill would apply these provisions, to the extent required by federal law, to a county office of education and a charter school, thereby imposing a state-mandated local program.

This bill would prohibit a pupil in any of grades 3 to 12, inclusive, from being required to retake those portions of the CELDT that measure English language skills for which he or she has previously tested as advanced within the appropriate grade span, as determined by the State Department of Education in accordance with specified law. Notwithstanding the above prohibition, the bill also would prohibit a pupil in any of grades 10 to 12, inclusive, from being required to retake those portions of the CELDT that measure English language skills for which he or she has previously tested as early advanced or advanced. These prohibitions would ~~not become effective~~ *be implemented* until the CELDT publisher's contract that is in effect on January 1, 2012, expires and ~~would not be implemented~~ unless and until the department receives written documentation from the United States Department of Education that implementation is permitted by federal law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 313 of the Education Code is amended to read:

313. (a) Each school district that has one or more pupils who are English learners and, to the extent required by federal law, each county office of education and each charter school shall assess the English language development of each pupil in order to determine the level of proficiency for purposes of this chapter.

(b) The department, with the approval of the state board, shall establish procedures for conducting the assessment required pursuant to subdivision (a) and for the reclassification of a pupil from English learner to English proficient.

(c) Commencing with the 2000–01 school year ~~to the 2012–13 school year, inclusive~~ until subdivision (d) is implemented, the assessment shall be conducted upon initial enrollment, and annually, thereafter, during a period of time determined by the Superintendent and the state board. The annual assessments shall continue until the pupil is redesignated as English proficient. The assessment shall primarily utilize the English language development test identified or developed by the Superintendent pursuant to Chapter 7 (commencing with Section 60810) of Part 33 of Division 4 of Title 2.

~~(d) (1) Commencing with the 2013–14 school year, the~~

(d) (1) *This subdivision shall not be implemented unless and until the department receives written documentation from the United States Department of Education that federal law permits the implementation of the changes set forth in this subdivision or until the 2013–14 school year, whichever occurs later.*

(2) The assessment shall be conducted annually during a period that commences on the day upon which 55 percent of the instructional year is completed through July 1 of that calendar year. Annual assessments shall continue until the pupil is redesignated as English proficient. The annual assessment shall primarily utilize the English language development test identified or developed by the Superintendent pursuant to Chapter 7 (commencing with Section 60810) of Part 33 of Division 4 of Title 2.

~~(2) Commencing with the 2013–14 school year, the assessment~~

1 (3) *The assessment* shall be conducted upon the initial  
2 enrollment of a pupil in order to provide information to be used  
3 to determine if the pupil is an English learner.

4 (A) If the initial enrollment of a pupil occurs on a date outside  
5 of the testing period identified pursuant to paragraph (1), the prior  
6 year's annual assessment for the grade in which the pupil is  
7 enrolling shall be used for this purpose.

8 (B) If the initial enrollment of a pupil occurs on a date within  
9 the testing period identified pursuant to paragraph (1), the initial  
10 assessment of the pupil shall be conducted as part of the annual  
11 assessment conducted pursuant to paragraph (1).

12 ~~(3)~~

13 (4) Notwithstanding paragraph (1), a school district shall assess  
14 the English language development of a pupil pursuant to this  
15 section no more than one time per school year.

16 (e) The assessments conducted pursuant to subdivision (d) shall  
17 be conducted in a manner consistent with federal statutes and  
18 regulations.

19 (f) The reclassification procedures developed by the department  
20 shall utilize multiple criteria in determining whether to reclassify  
21 a pupil as proficient in English, including, but not limited to, all  
22 of the following:

23 (1) Assessment of language proficiency using an objective  
24 assessment instrument, including, but not limited to, the English  
25 language development test that is developed or acquired pursuant  
26 to Section 60810.

27 (2) Teacher evaluation, including, but not limited to, a review  
28 of the pupil's curriculum mastery.

29 (3) Parental opinion and consultation.

30 (4) Comparison of the performance of the pupil in basic skills  
31 against an empirically established range of performance in basic  
32 skills based upon the performance of English proficient pupils of  
33 the same age, that demonstrates whether the pupil is sufficiently  
34 proficient in English to participate effectively in a curriculum  
35 designed for pupils of the same age whose native language is  
36 English.

37 (g) This section does not preclude a school district or county  
38 office of education from testing English learners more than once  
39 in a school year if the school district or county office of education  
40 chooses to do so.

1 SEC. 2. Section 60810 of the Education Code is amended to  
2 read:

3 60810. (a) (1) The Superintendent shall review existing tests  
4 that assess the English language development of pupils whose  
5 primary language is a language other than English. The tests shall  
6 include, but not be limited to, an assessment of achievement of  
7 these pupils in English reading, speaking, and written skills. The  
8 Superintendent shall determine which tests, if any, meet the  
9 requirements of subdivisions (b) and (c). If any existing test or  
10 series of tests meets these criteria, the Superintendent, with  
11 approval of the state board, shall report to the Legislature on its  
12 findings and recommendations.

13 (2) If no suitable test exists, the Superintendent shall explore  
14 the option of a collaborative effort with other states to develop a  
15 test or series of tests and share test development costs. If no suitable  
16 test exists, the Superintendent, with approval of the state board,  
17 may contract to develop a test or series of tests that meets the  
18 criteria of subdivisions (b) and (c) or may contract to modify an  
19 existing test or series of tests so that it will meet the requirements  
20 of subdivisions (b) and (c).

21 (3) The Superintendent and the state board shall release a request  
22 for proposals for the development of the test or series of tests  
23 required by this subdivision. The state board shall select a  
24 contractor or contractors for the development of the test or series  
25 of tests required by this subdivision, to be available for  
26 administration during the 2000–01 school year.

27 (4) The Superintendent shall apportion funds appropriated to  
28 enable school districts to meet the requirements of subdivision (d).  
29 The state board shall establish the amount of funding to be  
30 apportioned per test administered, based on a review of the cost  
31 per test.

32 (5) An adjustment to the amount of funding to be apportioned  
33 per test is not valid without the approval of the Director of Finance.  
34 A request for approval of an adjustment to the amount of funding  
35 to be apportioned per test shall be submitted in writing to the  
36 Director of Finance and the chairpersons of the fiscal committees  
37 of both houses of the Legislature with accompanying material  
38 justifying the proposed adjustment. The Director of Finance is  
39 authorized to approve only those adjustments related to activities  
40 required by statute. The Director of Finance shall approve or

1 disapprove the amount within 30 days of receipt of the request and  
2 shall notify the chairpersons of the fiscal committees of both houses  
3 of the Legislature of the decision.

4 (b) (1) The test or series of tests developed or acquired pursuant  
5 to subdivision (a) shall have sufficient range to assess pupils in  
6 grades 2 to 12, inclusive, in English listening, speaking, reading,  
7 and writing skills. Pupils in kindergarten and grade 1 shall be  
8 assessed in English listening and speaking, and, once an assessment  
9 is developed, early literacy skills. The early literacy assessment  
10 shall be administered for a period of three years beginning after  
11 the initial administration of the assessment or until July 1, 2012,  
12 whichever occurs first. Six months after the results of the last  
13 administered assessment are collected, but no later than January  
14 1, 2013, the department shall report to the Legislature on the  
15 administration of the kindergarten and grade 1 early literacy  
16 assessment results, as well as on the administrative process, in  
17 order to determine whether reauthorization of the early literacy  
18 assessment is appropriate.

19 (2) In the development and administration of the assessment  
20 for pupils in kindergarten and grade 1, the department shall  
21 minimize any additional assessment time, to the extent possible.  
22 To the extent that it is technically possible, items that are used to  
23 assess listening and speaking shall be used to measure early literacy  
24 skills. The department shall ensure that the test and procedures for  
25 its administration are age and developmentally appropriate. Age  
26 and developmentally appropriate procedures for administration  
27 may include, but are not limited to, one-on-one administration, a  
28 small group setting, and orally responding or circling a response  
29 to a question.

30 (c) The test or series of tests shall meet all of the following  
31 requirements:

32 (1) Provide sufficient information about pupils at each grade  
33 level to determine levels of proficiency ranging from no English  
34 proficiency to fluent English proficiency with at least two  
35 intermediate levels.

36 (2) Have psychometric properties of reliability and validity  
37 deemed adequate by technical experts.

38 (3) Be capable of administration to pupils with any primary  
39 language other than English.

40 (4) Be capable of administration by classroom teachers.

(5) Yield scores that allow comparison of the growth of a pupil over time, can be tied to readiness for various instructional options, and can be aggregated for use in the evaluation of program effectiveness.

(6) Not discriminate on the basis of race, ethnicity, or gender.

(7) Be aligned with the standards for English language development adopted by the state board pursuant to Section 60811.

(8) Be age and developmentally appropriate for pupils.

(d) The test shall be used for the following purposes:

(1) To identify pupils who are limited English proficient.

(2) To determine the level of English language proficiency of pupils who are limited English proficient.

(3) To assess the progress of limited-English-proficient pupils in acquiring the skills of listening, reading, speaking, and writing in English.

(e) (1) A pupil in any of grades 3 to 12, inclusive, shall not be required to retake those portions of the test that measure English language skills for which he or she has previously tested as advanced within each appropriate grade span, as determined by the department in accordance with paragraph (8) of subdivision (c).

(2) Notwithstanding paragraph (1), a pupil in any of grades 10 to 12, inclusive, shall not be required to retake those portions of the test that measure English language skills for which he or she has previously tested as early advanced or advanced.

(3) This subdivision shall not ~~become effective~~ *be implemented* until the test publisher's contract that is in effect on January 1, 2012, expires.

(4) This subdivision shall not be implemented unless and until the department receives written documentation from the United States Department of Education that implementation is permitted by federal law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.